



**CITY OF CEDAR PARK
FIRE FIGHTERS' AND POLICE OFFICERS'
CIVIL SERVICE COMMISSION
RULES AND REGULATIONS**

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INTRODUCTION

The purpose of Chapter 143 of the Local Government Code is to secure efficient Fire and Police Departments composed of capable personnel, free from political influence.

These Rules are promulgated in compliance with Chapter 143 of the Local Government Code, which is incorporated herein for all purposes. It is intended that these Rules shall complement said statute and not conflict with the statute in any manner. No set of rules can be so precise as to provide for every employment situation; therefore, it is intended that the Civil Service Commission administer these Rules in the best interest of the Fire and Police Departments.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

CITY OF CEDAR PARK FIRE FIGHTERS' AND POLICE OFFICERS' CIVIL SERVICE COMMISSION RULES AND REGULATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section 143.001 PURPOSE

There is hereby established the City of Cedar Park Fire Fighters' and Police Officers' Civil Service with the adoption of these Rules and Regulations, in compliance with Chapter 143, as amended, of the Texas Local Government Code. The captions used in these local Rules are not intended to convey any legal meaning or benefit but are included solely to aid in the organization of the Rules.

The scope and construction of the Rules hereinafter set forth shall be interpreted and applied within the spirit and intent of Chapter 143. It is intent of these Rules to cover situations not mentioned in Chapter 143 or which are ambiguous in Chapter 143. All situations that are not expressly covered by Chapter 143 or these Rules shall be resolved in accordance with the City Charter and ordinances, City of Cedar Park Personnel Policies or the residual discretionary authority vested in a department head. These Rules shall apply to all of the classified, non-probationary employees covered under Chapter 143.

The Commission, acting in compliance with Chapter 143, has the authority to adopt, publish and enforce rules relating to:

- (1) The proper conduct of Commission business meetings;
- (2) The proper conduct of examinations for entry level and promotional eligibility;
- (3) The proper conduct of appeals of testing and examination scoring;
- (4) The prescribed cause or causes for the removal or suspension of a civil service employee;
- (5) The procedures for the hearing of disciplinary appeals concerning suspensions without pay, indefinite suspensions, promotional passovers; recommended demotions; or written promotional examinations; and
- (6) Such other matters reasonably related to the selection, promotion and discipline of civil service employees, not otherwise vested in the discretion or managerial authority of the City Council, City Manager, Director of Civil Service, or Department Heads.

Section 143.002 MUNICIPALITIES COVERED BY CHAPTER

See Section 143.002 of Chapter 143

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.003 DEFINITIONS

See Section 143.003, Chapter 143

[Subject to additions, deletions or modifications as additional rules are adopted.]

- (1) **APPOINTMENT** - The designation of a person by the City Manager to become an employee in a classified civil service position.
- (2) **BUSINESS DAY** - Any day City Hall is customarily open for normal business. "Business Day" does not refer to the employee's workday or holidays observed by the City.
- (3) **CHIEF EXECUTIVE** - The City Manager of the City of Cedar Park.
- (4) **CHAPTER 143** - The portion of the Texas Local Government Code containing the civil service provisions.
- (5) **CLASSIFICATION** - A position or group of positions that involve similar duties and responsibilities and require similar qualifications.
- (6) **COMMISSION** – The Cedar Park Civil Service Commission.
- (7) **CONVICTION OR CONVICTED** - A person is convicted if he/she has pled guilty, no contest (Nolo contendere), or been found guilty in a trial, regardless of whether:
 - The sentence is subsequently probated and the person is discharged from probation;
 - The defendant has received an unadjudicated or deferred adjudication probation, or similar deferred disposition, for a criminal offense;
 - The case has been made the subject of a expunction order; or
 - The person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.
- (8) **DAY** - Calendar day, unless otherwise specified.
- (9) **DEPARTMENT HEAD** - The Fire or Police Chief of the City of Cedar Park.
- (10) **DEMOTION** - The transfer of an employee from a position in one classification to a position in another classification for which the maximum rate of pay is lower.
- (11) **DIRECTOR** - The Director of Civil Service as designated by the City of Cedar Park Civil Service Commission to act in the capacity of Secretary to the Commission and Director of Civil Service, and includes his/her designee.
- (12) **ELIGIBILITY LIST** - A list of applicants for a classified civil service position who have taken the examination and passed and are ranked on the eligibility list in order of the score received, including tiebreakers. Applicant shall successfully pass additional steps in the selection process conducted by the respective Department prior to any offer of employment being extended.
- (13) **MILITARY SERVICE CREDIT** - The points added to the passing score of an entrance examination taken by a qualified veteran.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (14) **RAW SCORE** - The numerical grade based upon the questions correctly answered on an examination.
- (15) **SENIORITY** – For the purpose of breaking a tie on a promotional examination, years of service as a full-time peace officer or fire fighter within the Department, whether interrupted or uninterrupted. Seniority points shall be awarded only for whole years of service.
- (16) **VETERAN** - A person who has served a minimum of 180 days of active duty in the armed forces of the United States of America and who has received a DD-214 that reflects an honorable discharge. A person who receives a discharge other than honorable is not a veteran for the purpose of this section.

Section 143.004 ELECTION TO ADOPT OR REPEAL CHAPTER

See Section 143.004, Chapter 143

Section 143.005 STATUS OF EMPLOYEES IF CHAPTER ADOPTED

See Section 143.005, Chapter 143

Section 143.006 IMPLEMENTATION: COMMISSION

See Section 143.006, Chapter 143

- (1) **MEETINGS** - The Commission shall conduct its meeting in such place as designated in the "Notice of Meeting." The Commission shall conduct all meetings in compliance with the provisions of Section 551.001 et seq. of the Government Code (Open Meetings Act)

A meeting shall be called by the Director at the request of the Chairperson, or at the written request of any two (2) Commissioners. Notice of meeting of the Commission shall be given by the Director to the members of the Commission at least seventy-two (72) hours preceding the day of the meeting, except in case of emergency or urgent public necessity, in which case two (2) hours notice shall be given in accordance with the provisions of the Government Code.

In all matters of procedure not controlled by the provisions of the Local Government Code, the order of business and conduct of meetings shall be in conformity with Robert's Rules of Order. The Commission may, by majority vote, make rules of procedure for the administration of Chapter 143 of the Local Government Code.

- (2) **RULES OF THE COMMISSION** -The rules of the Commission currently in effect are only those contained herein. These Rules have been approved by the Commission and shall remain in effect until officially amended, revised or repealed by the Commission.

Amendment to these Rules may be made at any meeting of the Commission and such amendment shall become effective on the date of compliance with the posting and notice requirements of Chapter 143 and of these Rules. All rules and amendments shall be printed and made reasonably available for access by all civil service employees.

- (3) **APPOINTMENT, VACANCY AND TERM OF COMMISSIONER** - The City Manager shall appoint and the City Council shall confirm the appointment of the three members of the Commission who meet the required statutory qualifications. The members shall elect one member to serve as Chairperson and

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

one to serve as Vice-Chairperson.

When a vacancy on the Commission occurs, the replacement of Chairperson and Vice-Chairperson shall be handled as follows: 1) in the event of a vacancy in the Chairperson position, the Vice-Chairperson shall assume the role of Chairperson and an interim election shall be held to elect a new Vice-Chairperson: and 2) in the event of vacancy in the Vice-Chairperson position, an interim election shall be held to fill that office.

Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and confirmed. An interim vacancy on the Commission shall be filled by appointment of the City Manager and confirmed by the City Council for the unexpired term of the member whose position has been vacated.

Section 143.007 REMOVAL OF COMMISSION MEMBER

See Section 143.007, Chapter 143

A member of the Commission may tender his/her resignation in writing at any time to the City Manager. A Commission member may be removed from office by the City Council for misconduct in office or otherwise in accordance with Chapter 143 of the Texas Local Government Code.

If a Commission member is absent three (3) meetings during a twelve (12) month period without good and reasonable cause, the absent member may be automatically deemed to have submitted a resignation, and if accepted by the City Manager, the position shall be deemed vacant without further action. Upon the occurrence of any of these events, a request shall be made by the Director to the City Manager for a replacement of such member.

Section 143.008 ADOPTION AND PUBLICATION OF RULES

See Section 143.008, Chapter 143

Where there is a conflict between these Rules and other rules pertaining to classified employees of the City, then these Rules shall take precedence. If any section, subsection, paragraph, sentence, clause, phrase or word contained in these Rules shall be held by the courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portion of these Rules.

These Rules are enacted by the Commission pursuant to the statutorily delegated authority of Chapter 143. These Rules were not acted upon in any official manner by the City Council. Therefore, these Rules do not constitute any form of "policy" nor any other official act of the City Council.

Section 143.009 COMMISSION INVESTIGATIONS

See Section 143.009, Chapter 143.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.010 COMMISSION APPEAL PROCEDURE

See Section 143.010, Chapter 143

- (1) **ORIGINAL NOTICE OF APPEAL**—The employee's notice of appeal shall be filed in writing with the Director within 240 hours after receiving the Notice of disciplinary action from the Department Head. An employee may withdraw his/her request for an appeal at any time, and thereby terminate the appeals process.

The employee's notice of appeal and request for hearing shall set forth the employee's basis for appeal in compliance with Chapter 143.

- (2) **FAILURE TO TIMELY FILE AN APPEAL OR SET FORTH BASIS FOR APPEAL**—There shall be no right to an appeal hearing in a situation where an employee either (i) fails to file a notice of appeal of a disciplinary action with the Director within the 240 hour period allowed in Chapter 143 or (ii) fails to properly state the basis of appeal. This shall result in an appeal in the matter not being established. If the appeal is untimely or does not properly state the basis for appeal, the Director shall notify the employee that the appeal shall not be considered.

- (3) **SUBPOENA**—Before requesting a subpoena duces tecum for the production of documents, a party shall first make a request for the documents directly to the other party and allow a reasonable time for a response. If the request is refused or otherwise not produced, then a request may be filed with the Director requesting the Commission to issue a subpoena duces tecum. This request shall be filed with the Director at least ten (10) days prior to the hearing date, and the party requesting the documents shall also serve the opposing party with a copy of the subpoena duces tecum at least ten (10) days prior to the hearing date. If the opposing party wishes to object to the request for the issuance of a subpoena duces tecum, the opposing party shall file its written objections with the Director at least six (6) days prior to the hearing. If the Commission receives written objections to the issuance of a subpoena duces tecum from the opposing party, the Commission shall meet no later than the third day before the hearing to determine whether to issue, quash or modify the requested subpoena. This meeting may be convened by conference call, at the discretion of the Chairman. The Director shall then notify the parties verbally and in writing of the Commission's decision. Because of the short time frame permitted in this process, all written materials may be served by facsimile by the parties to each other and to the Director.

A request for subpoena to compel the attendance of a witness shall be coordinated through the Director. A request for a subpoena shall be submitted at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director shall issue a subpoena on behalf of the Commission.

- (4) In appeals to the Commission, the "rules of evidence" shall not be observed.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (5) The Commission shall base its decisions on "substantial evidence."

"Substantial evidence" is evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

Under the substantial evidence rule, as applied in administrative proceedings, evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion."

Section 143.011 DECISIONS AND RECORDS

See Section 143.011, Chapter 143

Section 143.012 DIRECTOR

See Section 143.012, Chapter 143

The Director shall perform work incidental to the Civil Service System as required by the Commission. All communications or requests to the Commission shall be made in writing to the Director. The Director shall also act as Secretary to the Commission. The Director's duties include, but are not limited to:

- (1) Supervising all examinations, including the preparation, scheduling, scoring and security of test materials;
- (2) Coordinating the recruitment and examination of applicants;
- (3) Assisting in the classification of Fire and Police Department positions;
- (4) Assisting the Chairperson in setting the agenda for the Commission meetings;
- (5) Acting as liaison and providing staff support to the Commission;
- (6) Determining whether any matter is appropriately brought before the Commission in a reasonable and timely fashion;
- (7) Calling, scheduling, rescheduling, and canceling meetings of the Commission;
- (8) Acting as records custodian as provided by Chapter 143;
- (9) Acting on behalf of the Commission for actions and issues not specifically addressed in Chapter 143 or these Rules;
- (10) Establishing and monitoring procedures for the discipline and termination of civil service employees;
- (11) When a specific Rule does not address a particular question or issue, interpreting the Rules based on circumstances, facts and issues, and taking appropriate action; and
- (12) Performing such other functions as may be deemed reasonably necessary in regard to the efficient and effective administration of the civil service system of the City.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.013 APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD

See Section 143.013, Chapter 143

Section 143.014 APPOINTMENT AND REMOVAL OF PERSON CLASSIFIED IMMEDIATELY BELOW DEPARTMENT HEAD

See Section 143.014, Chapter 143

Section 143.015 APPEAL OF COMMISSION DECISION TO DISTRICT COURT

See Section 143.015, Chapter 143

Section 143.016 PENALTY FOR VIOLATION OF CHAPTER

See Section 143.016, Chapter 143

Section 143.017 COMMISSION PROCEDURES

See Section 143.017, Chapter 143

- (1) **RULE OF CONDUCT**—In the discharge of their duties, members of the Commission act as a body and not as individuals. An individual Commission member shall not speak for the Commission unless specially authorized in advance to do so by action of the Commission.
- (2) **AGENDA**—The Director shall assist the Chairperson in preparing an agenda for a Commission meeting. If a Commission member wants an item placed on an agenda, he/she shall submit a written request to the Director for consideration by the Chairperson.
- (3) **QUORUM**—Two members of the Commission constitute a quorum sufficient to conduct business meetings and hearings.
- (4) **CONDUCT OF REGULAR BUSINESS MEETINGS**—The Commission shall set reasonable rules and procedures for proper and efficient conduct of business. The Chairperson shall conduct meetings in an orderly and timely fashion.

The normal order of business at non-disciplinary or non-appeal hearings shall be generally:

- (a) Call to Order
- (b) Approval of Minutes
- (c) Action Items
- (d) Miscellaneous Matters from the Director
- (e) New Business - Commission members may suggest items for future agendas
- (f) Adjourn

The Chairperson may alter the order of business at his/her discretion.

- (4) **MINUTES**—The Secretary of the Commission shall prepare the minutes of each meeting. The minutes of a meeting shall be presented for approval at a subsequent meeting of the Commission. The minutes, other than matters discussed in executive session, upon approval by the Commission, shall be kept open for public inspection as governed by applicable State law. A Commission member may record in the minutes an approval of, or objection to, any act of the Commission together with the

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Commissioner's reasons. A copy of the minutes and records may be obtained from the Director for the standard fee charged by the City for similar official record duplication. The minutes of the Commission shall be signed by the Chairperson, or in the Chairperson's absence, the Vice-Chairperson.

(Sections 143.018 - 143.020 reserved for expansion)

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

Section 143.021 CLASSIFICATION; EXAMINATION REQUIREMENT

See Section 143.021, Chapter 143

The civil service positions in the Fire and Police Departments are classified on the basis of similarity in duties and responsibilities.

Section 143.022 PHYSICAL REQUIREMENTS AND EXAMINATION

See Section 143.022, Chapter 143

- (1) **GENERAL REQUIREMENTS**—Each applicant for entry-level positions shall be required to submit to such physical and mental tests as determined by the respective Department Heads to be reasonably necessary and proper to determine the physical and mental ability of the applicant to perform the essential functions required for the position sought. An applicant who is not capable of performing the essential job functions with or without reasonable accommodation shall not be appointed.
- (2) **ENTRY LEVEL APPEALS**—If an applicant is not appointed due to failure to successfully pass the medical or psychological examination, the applicant may appeal to the Commission. If the applicant elects to appeal, the applicant shall submit written notice of appeal to the Director within 240 hours of initial receipt of notification of rejection.
- (3) **PROMOTIONAL REQUIREMENTS**—Any candidate for promotion shall successfully complete an appropriate medical examination. An official Department examination taken within six (6) months of promotion test date may be used for this requirement.

Section 143.023 ELIGIBILITY FOR BEGINNING POSITION

See Section 143.023, Chapter 143

- (1) **EMPLOYMENT STANDARDS**—To the extent that employment standards for an entry-level fire fighter and police officer as provided in the Civil Service Classification Plan exceed the requirements of Chapter 143 and other applicable State laws, any of such entry-level employment requirements not prescribed by State laws may be waived by the Fire Chief or Police Chief with the concurrence of the Director and consent of the City Manager, when such waiver would be in the best interests of the Fire Department or Police Department and provided further that such waiver of requirements shall not substantially lower the high standards sought by the City. Any changes under this Section shall be based on each hiring process.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

(2) MINIMUM ELIGIBILITY REQUIREMENTS FOR FIRE FIGHTERS

An applicant for fire fighter shall meet the following criteria in order to be considered for an entry-level position:

- (a) Achieve a minimum passing score of seventy (70) percent on the written examination;
- (b) Successfully complete the physical ability test;
- (c) Pass a background investigation;
- (d) Pass oral interviews;
- (e) Successfully complete a post-job offer psychological examination and medical examination that includes passing a visual acuity test, and physician certification that the applicant is not dependent on and does not use illegal drugs;
- (f) Be at least nineteen (19) years of age and not more than thirty-five (35) years of age at the time of hire;
- (g) Be a graduate of an accredited high school or have an equivalency certificate;
- (h) Have a valid Texas driver's license at the date of hire;
- (i) Be a citizen of the United States by birth or naturalization;
- (j) Be able to read, write, and speak the English language;
- (k) Be of good moral character;
- (l) Be certified as basic firefighter, or certifiable at time of appointment, as established by the Texas Commission on Fire Protection and the Texas Department of Health. At or before the time of entrance examination, applicants shall provide either (1) evidence of certifiability issued by the Texas Commission on Fire Protection, or (2) evidence of current enrollment in a basic recruit fire training academy approved by the Texas Commission of Fire Protection; and
- (m) Be certified as EMT-Basic or higher by the Texas Department of Health at time of appointment. At or before the time of entrance examination, applicants shall provide either (1) an EMT Certificate issued by the Texas Department of Health, or (2) evidence of current enrollment in an EMT course approved by the Texas Department of Health.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

(3) MINIMUM ELIGIBILITY REQUIREMENTS FOR POLICE OFFICERS

An applicant for police officer shall meet the following criteria in order to be considered for an entry-level position:

- (a) Achieve a minimum passing score of seventy (70) percent on the written examination;
- (b) Pass a background investigation;
- (c) Successfully complete the physical fitness and/or physical ability test.
- (d) Successfully complete the video-based behavioral testing (BPAD) or other situational reasoning testing and assessment;
- (e) Pass oral interviews;
- (f) Successfully complete a post-job offer psychological examination and medical examination that includes passing a visual acuity test, and physician certification that the applicant is not dependent on and does not use illegal drugs;
- (g) Be at least twenty-one (21) years of age and not more than forty-four (44) years of age at the time of hire. A person who is thirty-six (36) years of age or older and under forty-five (45) years of age may not be certified as eligible for an entry-level position in the Police Department unless the person has at least five years of experience as an active full-time paid peace officer or at least five years of active military duty.
- (h) Be a graduate of an accredited high school or have an equivalency certificate;
- (i) Have a valid Texas driver's license at the date of hire;
- (j) Be a citizen of the United States by birth or naturalization;
- (k) Be able to read, write, and speak the English language;
- (l) Be of good moral character;
- (m) Shall not be prohibited from carrying a firearm or possessing ammunition; and
- (n) Be certified as a peace officer as established by the Texas Commission on Law Enforcement Officer Standards and Education at time of examination. Applicant shall provide evidence of certification on or before date of entrance examination.

(4) CAUSE FOR REJECTION FOR FIRE FIGHTERS AND POLICE OFFICERS

The City may reject an applicant for one or more of the following reasons listed below. Time calculations for an action that constitutes rejection for a specified period of time shall be calculated from the date the application for employment is submitted by an applicant.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (a) Applicant fails to pass any part of the entrance examinations;
- (b) Applicant fails to make application in the manner prescribed in the notice of examination, and/or fails to file the application with the Director within the time limits prescribed in the notice of examination;
- (c) Applicant fails to meet Minimum Standards for Initial Licensure as set forth by Texas Commission on Law Enforcement Officer Standards and Education for peace officer candidates or fails to meet any of the minimum requirements expressed in the rules of the Texas Commission on Fire Protection and the Texas Department of Health for fire fighter candidates;
- (d) Applicant is not a citizen of the United States of America by birth or naturalization. The applicant shall be considered disqualified until citizenship is obtained in compliance with federal laws.
- (e) Applicant fails to demonstrate his/her ability to read, write, and fluently speak the English language. The applicant shall be disqualified until the deficiency is corrected.
- (f) Applicant is unable to perform the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation.
- (g) Applicant has been convicted of or admitted to conduct that constitutes a Class A or Class B Misdemeanor under the Penal Code or equivalent under federal law, to include the Uniform Code of Military Justice (UCMJ), within the past ten (10) years. Conviction of or admission to conduct that constitutes a Class A or Class B Misdemeanor shall result in a temporary rejection. Crimes involving moral turpitude may result in permanent disqualification and shall be considered on a case-by-case basis with appropriate consideration of circumstances and recency.

Applicant has been convicted of or admitted to conduct which constitutes a felony under state or federal law, to include the UCMJ. Conviction of or admission to conduct that constitutes a felony shall result in permanent disqualification.

An applicant shall not be considered for employment while charges are pending for any criminal offense or while he/she is currently on probation for any offense.

- (h) Applicant has made any false statement in any material fact; withheld information, practiced or attempted to practice any deception or fraud in his/her application, examination or appointment. Depending on the variables involved, rejection may be either permanent or temporary.
- (i) Applicant fails to complete or satisfactorily meet the employment process requirement of the respective Department, including missed appointments, failure to return necessary paperwork, failure to notify Department of changes in address or telephone numbers, failure to properly complete any or all application materials, or who otherwise fails to complete application process.
- (j) Applicant fails to satisfactorily complete the oral interview process, including but not limited to B-PAD (Behavioral Personnel Assessment Device) for police officer applicants. An applicant

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

shall be disqualified for failure to verbally communicate effectively and appropriately; failure to demonstrate an understanding of the roles and responsibilities of a fire fighter or police officer; failure to present the maturity expected of a fire fighter or police officer; or failure to accurately and precisely respond to the questions of the interviewers.

- (k) Applicant has used illicit substances as indicated by the following guidelines:

An applicant may be temporarily or permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes excessive and/or recent use of illicit substance(s) or excessive use of intoxicants. Conduct involving excessive and/or recent use of illicit substance or excessive use of intoxicants shall be considered on a case-by-case basis with consideration given to circumstances and recency.

An applicant may be temporarily or permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes abuse of legally obtained prescription medication(s), or illegal use of the prescription medication(s) of another person. Conduct involving the abuse and/or misuse of prescription medication(s) shall be considered on a case-by-case basis with consideration given to circumstances and recency.

An applicant shall be permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes illegal use of felony grade substances as defined in the Texas Penal Code.

- (l) Applicant has a conviction of DWI/BWI/FWI/DUI within the past five (5) years or violations exceeding four (4) events (moving violations or preventable accidents) within the past three (3) years. An applicant shall be temporarily disqualified until he/she can meet the above standards.

Lesser, but more severe, violations which tend to indicate driving habits that are not compatible with the operation of emergency vehicles and present potential liabilities to the City shall be temporary disqualifications. Reapplication shall be permitted when the applicant can meet the above standards.

- (m) Applicant has been dismissed or resigned in lieu of dismissal from any employment for inefficiency, delinquency, or misconduct. Said dismissal or termination shall be considered on a case-by-case basis. Rejection under this provision shall be considered permanent.
- (n) Applicant has demonstrated a failure to pay just debts. Due to the variables involved, each situation shall be considered on a case-by-case basis. Factors which shall be considered include, but are not limited to: type and number of debts, reasons for the bad credit, extenuating circumstances, and the potential for the credit-related problems impacting the applicant's judgment and integrity. Resolution of bad credit may result in requalification
- (o) Applicant has exercised poor judgment skills within the past five (5) years. The applicant has demonstrated either immaturity or poor judgment in the applicant's decision-making process. Examples of such conduct would include, but is not limited to: attendance at a party or social function at which controlled substances or dangerous drugs are consumed, and such activity is known or should have been known by the applicant; silent acceptance of known illegal conduct

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

by others in his/her presence; workplace behavior/decisions that adversely affect the business or associates, with little or no objectively justifiable need for such behavior. Rejection for this cause shall be temporary until the applicant can demonstrate that his/her judgment skills have developed.

- (p) Applicant has a history of unstable work, i.e., including short terms of employment over his/her employment history; a history of employment in an illegal occupation. Rejection under this provision shall be temporary in nature and an applicant shall be eligible for reapplication after a five (5) year period. Due to the variables involved, each situation shall be considered on a case-by-case basis. Rejection for employment in an illegal occupation shall be permanent in nature.
- (q) Applicant has failed to meet all legal requirements necessary for future licensing and certification as required by the Texas Commission on Law Enforcement Officer Standards and Education or the Texas Commission on Fire Protection. Rejection for this cause shall be temporary until applicant can meet those standards.
- (r) Applicant has been discharged from any military service under less than honorable conditions, including specifically:
 - i. Under other than honorable conditions;
 - ii. Bad conduct;
 - iii. Dishonorable; or
 - iv. Any other characterization of service indicating bad character.
- (s) Applicant fails to return a completed Personal History Statement at a time designated by the Department Head.

Section 143.024 ENTRANCE EXAMINATION NOTICE

See Section 143.024, Chapter 143

An applicant shall complete a City of Cedar Park Application for Employment and other forms as prescribed by the Director in order to take an entrance examination. Failure to pre-register in the manner and within the time limit prescribed in the "Notice of Entrance Examination," and/or failure to file the application or other supporting documents with the Director by the specified deadline, shall render an applicant ineligible to take the examination. An applicant shall make the application in his/her own handwriting or in typed form and shall certify the correctness of the facts.

The Director may, because of the small number of candidates, or because of any other good and sufficient reasons, such as death in the immediate family, public emergency, unavailability of test site, etc., postpone an examination to a later date.

Section 143.025 ENTRANCE EXAMINATIONS

See Section 143.025, Chapter 143

Application for employment shall be made to the Director on the appropriate application forms.

- (1) **EXAMINATIONS**—The actual conduct of every examination shall be under the direction of the Director who shall be responsible to the Commission. The Director shall have the authority to designate a Test

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Administrator, who shall be responsible for administering the examination. The Director may also select one or more persons as Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an "as needed" basis.

No person shall deceive or obstruct any person in respect of his/her right of examination under the provision of these rules and the Local Government Code; or falsely mark, grade or report the examination or standing of any person examined hereunder; or aid or furnish any special information for the purpose of either improving or injuring the rating of any such person for appointment or promotion. No applicant may deceive the Commission for the purpose of improving his/her chance for appointment or promotion.

An applicant for an entry-level position shall achieve a passing score on the written examination as established by the Commission, in order to be placed on the Eligibility List.

(2) **ENTRANCE EXAMINATION ADMINISTRATION PROCEDURES**

- (a) Smoking shall be prohibited at all times in the testing area.
- (b) Check In – An applicant shall be checked in and provide proof of identity with a valid Driver's License. No applicant shall be admitted once test instructions start.
- (c) Military Service Credit – An applicant who desires to have military service credit of five (5) points added to a passing test score of 70% or better, shall provide an original DD-214 showing a minimum of 180 total days of active military service at the time of application and by the specified application deadline. Any discharge other than honorable discharge is not creditable for the purpose of this section.
- (d) Failure to Appear - The application of an applicant who fails to appear for the entrance examination shall be voided and shall be disposed of by the Director.
- (e) Cancellation or postponement of entrance examination - The Commission or Director may cancel or postpone a scheduled entrance examination for sufficient cause.
- (f) Dishonesty- An examinee taking an entrance examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director.
- (g) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An applicant who needs special arrangements shall submit a request in writing to the Director at a time to be determined by the Director.

- (3) **TIE-BREAKERS**—Whenever two (2) or more competitors for an entry-level position attain the same grade, the tie shall be broken in the order listed below prior to the posting of the Eligibility List:

POLICE DEPARTMENT:

- (a) **Highest Test Score**—If a tie exists, the persons shall be ranked in the order according to which person had the highest examination raw score prior to the addition of Veteran's points.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (b) **Years of Experience**— If a tie still exists, the persons shall be ranked in the order according to which person has the most number of years of active paid full-time experience as a certified peace officer.
- (c) **Higher Certification**— If a tie still exists, the persons shall be ranked in the order according to which person has the higher certification level as a peace officer through TCLEOSE.
- (d) **Bachelor's Degree**— If a tie still exists, the persons shall be ranked in the order according to which person possesses a Bachelor's degree.
- (e) **Associate's Degree**— If a tie still exists, the persons shall be ranked in the order according to which person possesses an Associate's degree.
- (f) **Earliest Application Time**— If a tie still exists, the persons shall be ranked in the order according to which person has the earliest stamped time of application.
- (g) **By Lot**— If a tie still exists, the persons shall be ranked in the order by lot as determined by the Director.

FIRE DEPARTMENT:

- (a) **Highest Test Score**— If a tie still exists, the persons shall be ranked in the order according to which person had the highest examination raw score prior to the addition of Veteran's points.
 - (b) **Higher Certification**— If a tie still exists, the persons shall be ranked in the order according to which person has the higher certification level as a fire fighter through Texas Commission on Fire Protection.
 - (c) **Years of Experience**— If a tie still exists, the persons shall be ranked in the order according to which person has the most number of years of active paid full-time experience as a fire fighter.
 - (d) **Bachelor's Degree**— If a tie still exists, the persons shall be ranked in the order according to which person possesses a Bachelor's degree.
 - (e) **Associate's Degree**— If a tie still exists, the persons shall be ranked in the order according to which person possesses an Associate's degree.
 - (f) **Earliest Application Time**— If a tie still exists, the persons shall be ranked in the order according to which person has the earliest stamped time of application.
 - (g) **By Lot**— If a tie still exists, the persons shall be ranked in the order by lot as determined by the Director.
- (4) **ELIGIBILITY LIST**—An Eligibility List shall be in effect for one (1) year, unless exhausted before one year.

Each person on an Eligibility List shall notify the Director of any change in address. A notice sent to a person's last known address shall be considered sufficient notification.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.0251 REAPPOINTMENT OF POLICE OFFICERS

See Section 143.0251, Chapter 143

A classified employee who voluntarily resigns from the City of Cedar Park Police Department may be reappointed as a Police Officer with the Department without taking another entrance examination or being placed on an Eligibility List. Reappointment of a classified employee is totally at the discretion of the Police Chief.

- (1) The former officer shall submit a written request to be reappointed, within twenty-four (24) months from the date of separation, to the Police Chief, who makes the final recommendation to the City Manager for reappointment. A candidate for reappointment shall not be considered unless recommended by the Police Chief. A candidate for reappointment may not appeal his/her rejection by the Police Chief.
- (2) Prior to recommending reappointment of a former classified employee to the department, the Police Chief may review past performance records of the officer, conduct a background investigation, require appropriate alcohol and drug tests and require any other portion of the employment process he/she deems appropriate.
- (3) Successfully complete the physical fitness and/ physical ability test.
- (4) Upon receiving an offer of reappointment, the Police Officer shall pass a physical and psychological examination prescribed by the City.
- (5) A candidate for reappointment shall fully meet the requirements of the Texas Commission On Law Enforcement Officer Standards and Education.
- (6) A candidate for reappointment may be appointed regardless of the availability of a list of eligibles. A candidate for reappointment has priority over candidates on a list of eligibles.
- (7) In addition to the reasons for rejection listed in Section 143.023, a candidate for reappointment may be rejected for reasons related to previous work performance as a Cedar Park Police Officer.
- (8) Any candidate reappointed to the Police Department shall serve a one (1) year probationary period and prior service shall not count toward service for promotional eligibility.
- (9) The candidate's years of prior service may be counted to determine placement in the salary step system.
- (10) The candidate's years of prior service shall not count for determining vacation eligibility and rate.
- (11) Age limitations, as provided under Section 143.023(c), do not apply to reappointments.

Section 143.026 PROCEDURE FOR FILLING BEGINNING POSITIONS

See Section 143.026, Chapter 143

Section 143.027 PROBATIONARY PERIOD

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

See Section 143.027, Chapter 143

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.028 ELIGIBILITY FOR PROMOTION

See Section 143.028, Chapter 143

Section 143.029 PROMOTIONAL EXAMINATION NOTICE

See Section 143.029, Chapter 143

Section 143.030 ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.030, Chapter 143

The length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the Fire Department.

A fire fighter's prior service with the City does not count toward meeting the two (2) year requirement established in 143.030(b) and (e). A fire fighter rehired is not given credit for prior service to determine eligibility to take a promotional examination.

Section 143.031 ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.031, Chapter 143

- (1) For an employee hired after October 30, 2003, the length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the Police Department. For an employee hired prior to October 30, 2003, the probationary period shall be equivalent to the length of the employee's Field Training Officer program and shall be counted towards eligibility for taking a promotional examination. The length of the probationary period for employees hired prior to October 30, 2003, may be different.
- (2) The qualifications for a Lieutenant shall include intermediate certification as a peace officer as established by TCLEOSE at time of examination.
- (3) The qualifications for a Sergeant shall include intermediate certification as a peace officer as established by TCLEOSE at time of examination.

Section 143.032 PROMOTIONAL EXAMINATION PROCEDURE

See Section 143.032, Chapter 143

- (1) **EXAMINATIONS**—An examination shall be of such nature that it will test the relative capacity and fitness of the person examined to discharge the duties of the particular position to which he/she seeks appointment.

The actual conduct of every examination shall be under the direction of the Director who shall be responsible to the Commission. The Director shall have the authority to designate a Test Administrator, who shall be responsible for administering the examination. The Director may also select one or more persons as Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an "as needed" basis..

The Commission or Director may, because of the small number of eligible promotional candidates for any position, or because of any other good and sufficient reasons, such as death in the immediate family, public emergency, unavailability of test site, etc., postpone an examination to a later date.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

To provide for a competitive promotional examination so as to better serve the public, at least three (3) qualified candidates in the next lower position with two years' service shall sit for an examination. If there are not three (3) candidates in the next lower position, the Commission shall follow the procedures relating to eligibility for promotional examinations outlined in Section 143.030(d) and 143.031(c) until at least three (3) qualified candidates sit for the examination. When more than one vacancy exists at the time an examination is to be given, the Director shall determine whether the number of examinees who have filed Notices of Intent to Test is competitive. If necessary, the Director shall make a recommendation to the Commission to open the examination to additional employees, as outlined in Section 143.030(d) and 143.031(c).

No person shall deceive or obstruct any person in respect of his/her right of examination under the provision of these rules and the Civil Service Act; or falsely mark, grade or report the examination or standing of any person examined hereunder; or aid or furnish any special information for the purpose of either improving or injuring the rating of any such person for appointment or promotion. No promotional candidate shall deceive the Commission for the purpose of improving his/her chance for appointment or promotion.

- (2) **NOTICE OF INTENT TO TEST**—An employee shall complete a Notice of Intent to Test, as prescribed by the Director, in order to take a promotional examination. Failure to make application in the manner prescribed in the "Notice of Promotional Examination" and failure to file the application with the Director within the time limits prescribed in the "Notice of Promotional Examination" shall render the employee ineligible to take the examination.

(3) **PROMOTIONAL EXAMINATION ADMINISTRATION PROCEDURES**

- (a) Smoking shall be prohibited at all times in the testing area.
- (b) Check In – An examinee shall be checked in and provide proof of identity with a valid Driver's License. No examinee shall be admitted once test instructions start.
- (c) Cancellation or postponement of promotional examination - The Commission or Director may cancel or postpone a scheduled promotional examination for sufficient cause.
- (d) Dishonesty- An examinee taking a promotional examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director.
- (e) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An examinee who needs special arrangements shall submit a request in writing to the Director at a time to be determined by the Director.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.033 PROMOTIONAL EXAMINATION GRADES

See Section 143.033, Chapter 143

- (1) **SENIORITY POINTS**—Up to ten (10) seniority points shall be added to the score of an examinee who receives a grade of at least 70 percent on the written examination, based upon whole years of service as a certified fire fighter in the Fire Department or police officer in the Police Department . Each full year of service equals one point. Seniority points shall be awarded only for whole years of service.
- (2) **TIE-BREAKERS**—Whenever two (2) or more competitors for promotion attain the same grade, including seniority points, the tie shall be broken in the order listed below:
 - (a) **Highest Test Score** – If a tie exists, the candidates shall be ranked in the order according to which candidate had the highest examination raw score prior to the addition of seniority points and after the Commission's determination of appeals, if any.
 - (b) **Time in Rank** – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most recent continuous seniority in the position immediately below the position for which the examination was given.
 - (c) **Seniority in the Department** - If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most seniority with the respective Department in a certified position, whether interrupted or uninterrupted.
 - (d) **Total Years of Experience as a Certified Fire Fighter or Police Officer**- If a tie still exists, the candidates shall be ranked in the order according to which candidate has the (i) most years of experience as a full-time, paid fire fighter for a position in a Fire Department; or (ii) most years of experience as an active, full-time, paid peace officer for a position in a Police Department.
 - (e) **Total City Service** – If a tie still exists, the candidates shall be ranked in order according to which candidate has the most total service time with the City, including time in a non-classified position.
 - (f) **Earliest Date of Initial Application** – If a tie still exists, the candidates shall be ranked in order according to the earliest stamped date and time of initial application for the promotion.
 - (g) **By Lot** – If a tie still exists, the candidates shall be ranked by lot as determined by the Director.

Section 143.034 REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

See Section 143.034, Chapter 143

Beginning on the first business day following the examination, a promotional candidate may review the examination booklet, his/her answer sheet, the answer key, and the source material for the examination in the presence of a monitor(s) designated by the Director. At such time that a promotional candidate submits a written appeal to the Director, a copy of the appealed question(s) along with the respective answer(s) from the answer key and the title and page number from the reference materials shall be given to the appellant.

The period of review of test materials begins the first business day after promotional examination grades are

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

posted and is limited to five business days during which an appeal may be filed.

The Commission shall receive a copy of each appeal submitted, the appealed question(s), and the appropriate source reference sheet(s). The appeal information shall not reveal the name of the appellant, prior to the regularly scheduled Commission meeting.

A promotional examination question appealed to the Commission shall be sustained, overruled, or eliminated by a Ruling issued by the Commission.

- (a) **Sustain the answer key** (test scores shall remain as reported)

A Ruling which rejects the appeal presented to the Commission shall require the Director to accept the answer as given on the answer key, while grading the promotional examinations of all eligible candidates.

- (b) **Overrule the answer key** (the Commission shall designate another answer(s) to be accepted)

A Ruling which sustains the appeal of a promotional examination question shall require the Director to accept two or more answers, as directed in the Ruling, while grading the promotional examination of all eligible candidates.

- (c) **Eliminate the test question** (the test question shall not be included)

A Ruling which rejects the test question related to the appeal of a promotional examination question shall require the Director to disregard the question and its answer while grading the promotional examination of all eligible candidates.

Formula for calculating scores after appeals:

The formula for calculating the promotional test scores shall be as follows:

$(100) / (\text{total number of test questions used}) = \text{point value of each question}$

$(\# \text{ of total test questions}) - (\# \text{ of wrong questions}) = \# \text{ of correct questions}$

$(\# \text{ of correct questions}) \times (\text{value of each question}) = \text{score}$

Section 143.035 ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPT.

See Section 143.035, Chapter 143

Section 143.036 PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS

See Section 143.036, Chapter 143

When the term "Commission" is used in Section 143.036 of the Local Government Code, the Director may perform the duties specified.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.037 RECORD OF CERTIFICATION AND APPOINTMENT

See Section 143.037, Chapter 143

Section 143.038 TEMPORARY DUTIES IN HIGHER CLASSIFICATION

See Section 143.038, Chapter 143

The Department Head may prescribe methods for selecting and making a temporary appointment to a higher classification when there is a vacancy. "Vacancy" does not mean temporary absence.

(Sections 143.039-143.040 reserved for expansion)

SUBCHAPTER C. COMPENSATION

Section 143.041 SALARY

See Section 143.041, Chapter 143

Section 143.042 ASSIGNMENT PAY

See Section 143.042, Chapter 143

Section 143.043 FIELD TRAINING OFFICER ASSIGNMENT PAY

See Section 143.043, Chapter 143

Section 143.044 CERTIFICATION AND EDUCATIONAL INCENTIVE PAY

See Section 143.044, Chapter 143

Section 143.045 ACCUMULATION AND PAYMENT OF SICK LEAVE

See Section 143.045, Chapter, 143

An employee who is temporarily suspended or indefinitely suspended shall exhaust all appeal rights before the City is obligated to pay any accumulated civil service sick leave as prescribed under Chapter 143. The City shall not authorize a withdrawal from the Texas Municipal Retirement System (TMRS) unless the employee submits a written resignation and terminates employment with the City.

Section 143.046 VACATIONS

See Section 143.046, Chapter 143

An employee who is temporarily suspended or indefinitely suspended shall exhaust all appeal rights before the City is obligated to pay any accumulated vacation pay as prescribed under Chapter 143.

Section 143.047 SHIFT DIFFERENTIAL PAY

See Section 143.047, Chapter 143

(Sections 143.048-143.050 reserved for expansion)

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

SUBCHAPTER D. DISCIPLINARY ACTIONS

Section 143.051 CAUSE FOR REMOVAL OR SUSPENSION

See Section 143.051, Chapter 143

The following are declared to be grounds for dismissal or suspension of any employee from the classified service in the City of Cedar Park:

- (1) Indictment, deferred adjudication or other deferred disposition, or conviction of a felony, State Class A or B misdemeanor, federal misdemeanor, or other crime involving moral turpitude;
- (2) Violation of the provisions of the Charter of the City of Cedar Park;
- (3) Acts of incompetency;
- (4) Neglect of duty;
- (5) Discourtesy by said employee to the public or to fellow employees;
- (6) Acts of said employee showing a lack of good moral character;
- (7) Drinking of intoxicants while on duty or intoxication while off duty;
- (8) Conduct prejudicial to good order;
- (9) Neglect to pay just debts;
- (10) Absence without leave;
- (11) Shirking duties;
- (12) Cowardice; or
- (13) Violation of any of the rules and regulations of the Fire Department or General Orders of the Police Department; or of special orders as applicable; or of these Rules and Regulations; or of any of the City Personnel Policies; or of any other City Ordinance or Policy applicable to Police and Fire Department employees.

Section 143.052 DISCIPLINARY SUSPENSIONS

See Section 143.052, Chapter 143

- (1) An employee may be suspended for violation of:
 - (a) An applicable provision of Chapter 143, Texas Local Government Code;
 - (b) An applicable rule or regulation duly adopted by the Commission;
 - (c) Fire Department rules and regulations or Police Department General Orders;

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (d) The City Personnel Policies; or
- (e) Or any other City Ordinance or Policy applicable to Police or Fire Department employees.

For a suspension, a determination of what constitutes “cause” is generally made by comparison to what a reasonable person, who is mindful of the habits and customs of his/her Department, who is also mindful of the responsibilities and needs of his/her Department and who is also mindful of the standards of justice and fair dealing prevalent in the City, should have done (or should have not done) under similar circumstances.

Prior to imposing a suspension, the Department Head may use lesser forms of disciplinary or corrective action. However, nothing herein shall prohibit the Department Head from proceeding directly to the appropriate level of discipline without using progressive discipline, if in the opinion of the Department Head, the employee’s misconduct warrants more severe disciplinary action.

- (2) **WORKING OFF SUSPENDED TIME** – A classified employee in the Police or Fire Department who is suspended less than 40 hours in the Police Department or less than 60 hours in the Fire Department may, upon the employee’s request and at the respective Department Head’s discretion, forfeit vacation designated by the Department Head for a period equal to the time of the suspension. The employee shall be required to work on the forfeited vacation days. The provisions of this Section shall apply solely to a suspension which is agreed to by the employee and no appeal to the Commission or to a Hearing Examiner may be instituted on a suspension where the employee has agreed to the suspended time.

The employee shall have his/her vacation leave accumulated balance deducted in an amount equal to the suspension to qualify for this provision. In order to request Working Off Suspended Time, the suspended employee shall make a written request to the respective Department Head within 240 hours after receiving the Notice of Suspension. Failure to make a written request to the Department Head within the allotted time shall result in an employee not being eligible for the provisions of this Section.

Section 143.053 APPEAL OF DISCIPLINARY SUSPENSION

See Section 143.053, Chapter 143

- (1) **SCOPE OF MATTERS SUBJECT TO APPEAL**—The following disciplinary matters are subject to appeal:
 - (a) Indefinite suspension;
 - (b) Temporary suspension;
 - (c) Demotion; and/or
 - (d) Promotional passover.

If an action is subject to appeal, the employee may file an appeal. In the event of an appeal, the employee shall give written notice to the Director as provided under Section 143.010. If the appeal is timely and valid, the Director shall arrange to have an appeal hearing placed on the Commission’s agenda, or obtain a panel of Independent Third Party Hearing Examiners, as provided under Section 143.057.

Employee dissatisfaction resulting from a transfer or reassignment of duties shall not constitute

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

grounds for disciplinary appeal procedures.

Employee dissatisfaction resulting from a discretionary policy decision or policy matters shall not constitute grounds for disciplinary appeal procedures.

An employee who has voluntarily resigned or retired from his/her position forfeits all rights to utilize the disciplinary appeal processes.

An employee may voluntarily enter a written agreement with the Fire Chief or Police Chief that expressly evidences his/her intent finally to resolve the issue(s) of any type of disciplinary action imposed. The agreement shall also include a statement that the employee waives all rights to appeal.

- (2) **OPTIONS FOR DISCIPLINARY HEARINGS**—At any time after filing the original notice of appeal but before either party has incurred Hearing Examiner expenses, an employee may withdraw the original request for the Hearing Examiner and either completely waive his/her right to appeal or submit the appeal to a hearing before the Commission. The election shall be made in writing and filed with the Director. If the employee elects to submit the appeal to a hearing before the Commission, the Commission must hold the appeal hearing within thirty (30) days of the withdrawal of the request for a Hearing Examiner.

At any time after filing of the notice of appeal, the employee and the Fire Chief or Police Chief may mutually agree to withdraw the appeal from a Hearing Examiner and submit the appeal to a hearing before the Commission. The mutual agreement shall be made in writing and filed with the Director.

- (3) **DIRECTOR TO COORDINATE ALL MATTERS**—The location and accommodations for a hearing or appeal shall be arranged by the Director.

All subsequent matters raised by the appealing employee or the Department (“the parties”) regarding attendance, scheduling, requests for subpoenas, request for continuance, etc., shall be coordinated through the Director. All such information shall be provided to the Director who shall then provide copies of same to the opposing party or representative and also coordinate the appropriate response or action to be taken. In a hearing coordinated by an outside agency, that agency shall also provide coordination services between the parties and the Hearing Examiner in conjunction with the Director.

- (4) **EXPENSE AND COSTS**—The appropriate amount, as well as payment of all costs and expenses, may be determined and collected by the Director. An employee may receive an estimate of anticipated costs upon written request to the Director. All costs charged by the court reporter shall be split equally between the parties.

When applicable, the State law governing the doctrine of “mitigation of damages” shall be applied in computing reimbursements or an offset from an award of back pay.

- (5) **FAILURE TO ATTEND SCHEDULED HEARING**—The Commission or Hearing Examiner shall treat the appealing employee’s failure to attend a scheduled appeal hearing or to file a timely request for a continuance as a request to withdraw the appeal. Any request for a continuance must be filed with the Director or the Hearing Examiner at least three (3) business days before the date of the hearing.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (6) **EMPLOYEE AND DEPARTMENT REPRESENTATIVES**—The hearing process shall recognize the right of the employee, as well as the Department, to be represented throughout the appeal. However, only one representative shall be allowed to speak or otherwise present evidence on behalf of either party throughout the questioning of a particular witness.

An employee or Department representative shall use his/her best efforts to conclude all proceedings smoothly, expediently, and as fairly as possible to all concerned.

The function of the representative shall be to articulate the best interests of the employee or the Department represented and to make his/her presentations pertinent to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.

A representative or an employee who represents him/herself shall become familiar with and follow these Rules and Regulations at all times during the disciplinary appeal process.

A problem or concern regarding the manner in which the opposing party or his/her representative is handling a particular disciplinary appeal should be brought to the attention of the Director. The difficulty shall be expeditiously addressed.

- (7) **LIMITED DISCOVERY**--The Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, and all other Rules of Procedure, whether civil or criminal, regarding what is commonly known as "discovery" shall not apply to any civil service proceedings. Mediation and arbitration rules and processes do not apply to any civil service hearings.

Items from Departmental policies, rules and regulations manuals may be photocopied. Items such as Accident Review Board recommendations, time and attendance records, duty status forms and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

An employee and his/her representative may obtain copies of documents contained in the employee's own personnel files after the employee has signed the appropriate release form(s).

- (8) **FORMAT OF APPEAL HEARINGS**—The format for an appeals hearing before the Commission shall be as follows:

- (a) City's opening statement
- (b) Employee's opening statement
- (c) The City's (Department's) case:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (d) Employee's response:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (e) Rebuttal by the City, if any:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (f) City's closing argument
- (g) Employee's closing argument
- (h) City's rebuttal
- (i) Deliberation by the Commission in Executive Session
- (j) Decision

(9) HEARING PROCEDURES

- (a) At the scheduled time and place, the hearing shall be called to order.
- (b) Each party shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. Each party shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.
- (c) A record of the public proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.
- (d) After being called to order, but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The parties shall also seek to obtain as many stipulations as possible as to non-contested or non-material matters. The Commission may "carry" such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.
- (e) Unless waived by the parties, the hearing shall then proceed with the reading into the record the statement of charges and specifications, as well as factual summary of the operative events as filed with the Commission by the Department Head and which forms the basis of the disciplinary action imposed on the employee.
- (f) Upon request by either party, the hearing process shall utilize what is commonly known as "the Rule" concerning oral testimony, meaning that a person who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when he/she is actually testifying as a witness. "The Rule" may be used to ensure one witness' testimony is not influenced by another's testimony. While under "the Rule," a potential witness shall not discuss any aspect of the appeal or

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

hearing except with the attorneys or the representatives involved. Invoking “the Rule” is not mandatory and may be waived in whole or in part by agreement between the parties.

- (g) The hearing shall then proceed to develop the evidence and testimony as to those contested matters.
- (h) The City shall make the first presentation of evidence and testimony. Thereafter, the employee shall have the opportunity to respond with his/her own evidence, witnesses or testimony. Thereafter, the City may come forward with rebuttal evidence or testimony as may be necessary. Presentations by both parties shall be as brief and as closely related to the issue(s) as much as is possible. Throughout the proceedings, a Commission member may also ask questions as needed in order to aid his/her consideration of the testimony or evidence.
- (i) A witness may be sworn and his/her testimony taken under oath or affirmation. A witness is subject to reasonable and relevant cross-examination by the opposing party.
- (j) The Chairperson shall exercise reasonable control over the questioning of a witness and the presentation of evidence so as to:
 - (i) effectively ascertain the truth;
 - (ii) keep such presentations relevant to the issues to be determined; and
 - (iii) avoid the needless consumption of time and expense.
- (k) A party and his/her representative shall cooperate in keeping all presentations as brief and to the point as possible. Long drawn-out sessions shall be discouraged. The Commission may establish equal time limits for presentation of each side of the case.
- (l) A hearing shall remain business-like and focus upon resolution of factual matters. A hearing shall not be a time for accusations, threats, speeches or arguments. The Commission shall have the discretion to adjourn any meeting that deteriorates into a “shouting match” or where fruitful dialogue ceases.
- (m) The Commission shall have the discretion to control the length of time of any particular session as well as the amount of time provided for recesses, breaks, lunch hours, etc.
- (n) Before adjourning, the Commission may adjourn to Executive Session to deliberate. Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, vote upon its decision. Thereafter, a written Order containing the Decision shall be prepared and signed by the Commissioners prior to adjourning the hearing.

(10) RULES OF EVIDENCE

- (a) Technical rules of evidence shall not apply nor control the conduct of any hearing. The Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, and all other Rules of Procedure, whether civil or criminal, shall not apply nor govern any aspect of any civil service proceeding.
- (b) The scope of evidence to be considered at a disciplinary hearing shall be generally limited to

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

matters material and probative to the statement of charges as set forth in the Department's written statement, the employee's notice of appeal as well as the employee's previous employment record with the Department.

- (c) Either party may offer such material and probative evidence as he/she may desire to aid in the determination of disputed issues.
- (d) It shall be the province of the Commission to determine:
 - (i) The admissibility of any particular evidence or testimony;
 - (ii) The materiality or probative value, of any evidence or testimony; and
 - (iii) The weight to be given to any particular evidence or testimony.
- (e) Subject to limited exceptions for compelling reasons shown by a party, the Commission shall refuse to hear or consider any testimony or item of evidence after the hearing has been closed.
- (f) The Commission may receive and consider the evidence of a witness by affidavit and assign same such weight as it deems proper after consideration of objections, if any, made to its admission.
- (g) On-site inspections are discouraged and shall be conducted only if the evidence to be considered cannot be otherwise presented via stipulations, photographs, videotapes, maps, diagrams, etc.
- (h) All evidence and testimony shall be presented and received into the record while in open session.

(11) ISSUES TO BE DETERMINED IN DISCIPLINARY APPEALS

- (a) Generally, the determinative issues to be considered and determined by the disciplinary action appeal process shall be:
 - (i) Did cause exist to support the imposing of some form of disciplinary action as to the employee?
 - (ii) Was the degree of disciplinary action imposed by the Department reasonable under the circumstances? and
 - (iii) Has the hearing process developed matters that justify or compel modification of the Department Head's disciplinary action?
- (b) The Department Head shall establish the violation(s) by a preponderance of evidence standard.
- (c) It shall be recognized that prior to imposing any form of discipline, the Department Head may use lesser forms of disciplinary or corrective action. However, the failure to utilize progressive discipline shall not in itself be grounds to overturn or otherwise modify a Department Head's decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply and the seriousness of a single offense may negate a previously unblemished record.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (d) The hearing shall provide the employee a reasonable opportunity to produce objective evidence and/or testimony to demonstrate:
 - (i) That the employee did not commit the misconduct as alleged, i.e., “the allegations are not true”; or
 - (ii) That even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or
 - (iii) That even if the employee committed actionable misconduct, that the degree of discipline imposed is too harsh or severe, i.e. the disciplinary action imposed was “unreasonable, arbitrary or capricious”; or
 - (iv) A combination of any of these matters would justify or compel modification of the Department Head’s action.
- (e) An employee’s mere disagreement or difference in opinion in regard to the Department Head’s actions or reasoning shall not constitute grounds to overturn nor modify the disciplinary action.
- (f) If the Commission determines one valid charge of misconduct is supported by evidence sufficient to establish its truth, the Commission shall sustain that charge even if the evidence at the hearing does not support other charges in the letter of disciplinary action.

(12) FINDINGS AND ORDERS OF THE COMMISSION

- (a) On the basis of the evidence and testimony presented at the hearing, the Commission shall vote and issue a decision on the matter via a written Order finding the truth of the specific charge(s) against the employee, or a written Order finding that the specific charge(s) against the employee is not true.
- (b) The Commission’s decision may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final decision shall be made unanimously.
- (c) In the event that the charge(s) of misconduct against the employee is found to be “not true,” then the final Order shall be promptly to restore the employee to the employee’s proper position or status.
- (d) In the event that the charge(s) of misconduct against the employee is found to be “true,” then the final Order shall clearly state whether the employee is:
 - (i) Permanently dismissed from the Fire or Police Department; or
 - (ii) Temporarily suspended from the respective Department and shall then set forth the definite time period and conditions of suspension which shall be imposed;
 - (iii) Demoted (See Section 143.054) or
 - (iv) Restored to the former position or status.
- (e) The final Order on a disciplinary appeal shall also include such other matters as to resolve the issues under consideration, particularly:
 - (i) The employee’s resulting employment status;

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (ii) Back pay and other employment benefits; and/or
 - (iii) Mitigation of damages.
- (f) If modifying the disciplinary action of the Department, the Order shall clearly explain in writing the factors and rationale for doing so. If affirming the disciplinary action of the Department, it shall be presumed to be for the same reasons and facts as presented by the Department unless otherwise indicated.
- (g) The Commission may consider evidence of facts or events during the disciplinary appeal process that are outside the scope of the Department's statement of charges or the employee's notice of appeal to the extent permitted by law.
- (h) A copy of the Department's disciplinary action, a copy of the employee's request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the final Order shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations.

Section 143.054 DEMOTIONS

See Section 143.054, Chapter 143

The Commission's consideration of whether there is probable cause to support the Department Head's recommendation for demotion does not require an evidentiary hearing. If the Commission determines that probable cause exists for a recommended demotion, the Commission's letter to the employee shall include the Hearing Examiner option under Chapter 143.

After the Commission has determined that probable cause exists for a requested demotion and has provided the employee with a written Notice as per Chapter 143, the action for appeal of the demotion may be conducted according to the same hearing procedures as set forth herein for all other disciplinary actions or as expressly provided otherwise in Chapter 143.

Section 143.055 UNCOMPENSATED DUTY OF POLICE OFFICERS

See Section 143.055, Chapter 143

Section 143.056 PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT

See Section 143.056, Chapter 143

Conviction or deferred adjudication of a felony shall result in the employee being terminated from his/her position. No hearing before the Commission or a Hearing Examiner shall be provided.

Section 143.057 HEARING EXAMINERS

See Section 143.057, Chapter 143

- (1) Only a disciplinary action concerning an indefinite suspension, a suspension, a promotional passover because of disciplinary history or a recommended demotion is appealable to a Hearing Examiner.
- (2) The Director shall coordinate with the parties and the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

- (3) The rule-making power and authority of the Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.
- (4) In a disciplinary appeal conducted under Chapter 143, the Hearing Examiner shall have the “same duties and powers” as would the Commission, including the right to issue subpoenas to compel the attendance of a witness.
- (5) A disciplinary proceeding conducted by a Hearing Examiner instead of the Commission shall not be conducted or resolved via arbitration or arbitration processes. An employee’s election of appeal to a Hearing Examiner shall not constitute a right or an agreement to submit the appeal to arbitration or arbitration processes.
- (6) The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of Chapter 143 and these Rules and Regulations. The Hearing Examiner is to render a fair and just decision based solely on the evidence presented in the hearing. The scope of evidence to be considered at the hearing shall be generally limited to matters closely relevant to the charges of misconduct as set forth in the Department’s written statement and the employee’s notice of appeal as filed with the Commission as well as the employee’s previous work record with the Department.
- (7) A hearing conducted by a Hearing Examiner shall also be recorded so as to be capable of clear and accurate reproduction or transcription.
- (8) If a situation arises pertaining to the administration process of selecting a Hearing Examiner, or meeting notices, or request for rescheduling, refusal, conflict or interest, etc., and the situation is not provided for Chapter 143 or in these Rules and Regulations, then the parties and the Director shall attempt to mutually resolve the situation by agreement. If the matter is not one capable of being reasonably resolved by agreement, the Director may refer the matter to the administrative processes of the entity sponsoring the Hearing Examiner to resolve the situation within its own processes.
- (9) If a Hearing Examiner has been initially selected but is thereafter objected to or is asked to be excused by a party, both parties may mutually agree to excuse the Hearing Examiner and thereafter request a new list of qualified and neutral Hearing Examiners and start the selection process over again. If no such agreement can be reached, then both parties shall prepare a written statement including their requests and reasoning therefore which shall be submitted to the Director. The Director shall then transmit it to the entity sponsoring the Hearing Examiner, which shall then resolve the dispute according to its own administrative processes. The response shall either excuse the Hearing Examiner and thereafter provide a new list, or it shall provide a written statement of reasons why the Hearing Examiner was not excused.

(Sections 143.058-143.070 reserved for expansion)

SUBCHAPTER E. LEAVES

Section 143.071 LEAVES OF ABSENCE; RESTRICTION PROHIBITED

See Section 143.071, Chapter 143

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.072 MILITARY LEAVE OF ABSENCE

See Section 143.072, Chapter 143

Section 143.073 LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE

See Section 143.073, Chapter 143

“Temporary leave” under this section shall not exceed one (1) year.

Section 143.074 REAPPOINTMENT AFTER RECOVERY FROM DISABILITY

See Section 143.074, Chapter 143

Section 143.075 MILITARY LEAVE TIME ACCOUNTS

See Section 143.075, Chapter 143

(Sections 143.076 - 143.080 reserved for expansion)

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Section 143.081 DETERMINATION OF PHYSICAL OR MENTAL FITNESS

See Section 143.081, Chapter 143

Each employee shall continually remain in such physical and mental condition as to be capable of rendering safe and efficient service to the City and performance of the duties and essential functions assigned to the employee.

Each employee shall be required to submit to a psychological or physical examination where there exists some reasonable basis to believe that the employee’s mental or physical fitness for duty is an issue. Determination of the employee’s mental and/or physical fitness for duty shall not be subject to Commission or Hearing Examiner’s review. The findings of the medical panel as outlined in Chapter 143 shall be determinative and final.

Section 143.082 EFFICIENCY REPORTS

See Section 143.082, Chapter 143

Section 143.083 EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIGHTERS AND POLICE OFFICERS

See Section 143.083, Chapter 143

Section 143.084 CIVIL SERVICE STATUS AND PENSION BENEFITS FOR CERTAIN FIRE FIGHTERS AND POLICE OFFICERS

See Section 143.084, Chapter 143

Section 143.085 FORCE REDUCTION AND REINSTATEMENT LIST

See Section 143.085, Chapter 143

Section 143.086 POLITICAL ACTIVITIES

See Section 143.086, Chapter 143

Section 143.087 STRIKE PROHIBITION

See Section 143.087, Chapter 143

CITY OF CEDAR PARK CIVIL SERVICE RULES & REGULATIONS

Section 143.088 UNLAWFUL RESIGNATION OR RETIREMENT

See Section 143.088, Chapter 143

Section 143.089 PERMANENT PERSONNEL FILE

See Section 143.089, Chapter 143

Access to records of employees in the classified service, employment applications, background investigation records and reports, examinations and answer sheets shall be governed by Chapter 143 of the Texas Local Government Code and the Texas Government Code and appropriate federal statutes.

(Sections 143.090-143.100 reserved for expansion)